UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

BIGFOOT ON THE STRIP, LLC,)	
Plaintiff,)	
vs.)	Case № 6:18-CV-03155
RANDY WINCHESTER; and EMILY WINCHESTER,)))	
Defendants.)	

MOTION TO MODIFY SUBPOENA

COMES NOW, Jennifer Winchester, by and through her counsel, Jennifer R. Johnson and Michelle R. Stewart of Hinkle Law Firm, LLC, and pursuant to Rule 45(d)(3)(A)(iv), hereby moves to modify the subpoena served on her on or about May 6, 2019, for appearance at a deposition on May 9, 2019. In support of the Motion to Modify, Ms. Winchester submits the following:

- 1. Prior to issuing a subpoena in this action, Ms. Winchester agreed to appear for her deposition at 1:30 p.m. on May 9th, at the offices of Hinkle Law Firm, LLC. She has no objection to appearing and providing testimony.
- 2. This date and time was provided to Plaintiffs, and agreed, based on counsel's availability and Ms. Winchester's availability.
- 3. Specifically, Michelle Stewart and Jennifer Johnson who represent the Defendants and Ms. Winchester, are double booked the morning of May 9th. Ms. Stewart is available to produce Ms. Winchester in the afternoon, but requested the location be her office due to meetings earlier in the day that make appearance at another location problematic. Specifically Ms. Stewart is conducting an employee investigation at the City of Belton from 9:00am until 1:00pm and will be traveling from Belton City Hall directly to her office in Overland Park to produce Ms. Winchester for her deposition.

- 4. This information was communicated to Plaintiff's counsel and for unknown reasons, Plaintiff's counsel have refused to depose Ms. Winchester at the previously agreed to location defense counsel's office necessitating the filing of this Motion.
- 5. Ms. Winchester did not agree to produce documents at the time of her deposition, and as such, Plaintiffs were required to issue a subpoena to obtain the production. Plaintiff subsequently issued a subpoena and served it on Ms. Winchester.
- 6. Rather than requiring her appearance per the prior agreement at Hinkle Law Firm, Plaintiff's counsel noticed the deposition for a different location. When seeking clarification of the location, and confirming the prior agreement to produce Ms. Winchester at Hinkle Law Firm, Plaintiff's counsel responded and indicated that they would not agree to hold the deposition at Hinkle Law Firm because Ms. Winchester required a subpoena to be issued in this case, rather than agreeing to appear voluntarily to produce documents.
- 7. Plaintiff's basis for objecting to conducting Ms. Winchester's deposition at Hinkle Law Firm is wholly arbitrary, and the only purpose for requiring the deposition be held at that location is in retaliation for the fact that Ms. Winchester objected to producing documents voluntarily, without a subpoena issuing.
- 8. Notably, upon consultation, Ms. Winchester does not have any documents responsive to the subpoena because she does not maintain her text messages or emails with any person, including her husband and daughter, for longer than a couple of days; and thus, at the time she was on notice of the intent to subpoena documents, had no responsive emails or text messages, or other communications.

WHEREFORE, Jennifer Winchester hereby moves the Court to modify the subpoena, setting appearance location for the offices of her attorneys, Hinkle Law Firm, LLC, and for such other relief as the Court deems just and proper.

Respectfully submitted,

HINKLE LAW FIRM LLC 6800 College Boulevard, Suite 600 Overland Park, Kansas 66211 913-345-9205/ FAX: 913-345-4832

By:_..../s/ Michelle R. Stewart

Michelle R. Stewart, <u>mstewart@hinklaw.com</u> #19260 Jennifer R. Johnson, <u>ijohnson@hinklaw.com</u> #22096

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of May, 2019, the foregoing *Motion to Modify Subpoena to Jennifer Winchester* was filed electronically with the Clerk of the US District Court for the Western District of Missouri; and a service copy was served electronically via email only on the following:

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/s/ Michelle R. Stewart

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